IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

WRIT PETITION NO : 3197 of 1996

Between:

K.S.Rao S/o Nageswara Rao
E.No.69331, Mechanic, Working in Zonal work Shop R/o Nellore,
Nellore Dist

..... PETITIONER

AND

1 The Managing Director
APSRTC.,. Musheerabad,
Hyderabad.
2 The Works manager ,
AP.S.R.T.C., Zonal Work Shop.,
Nellore

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issuing rule nisi calling for the records leading up to inclusive of impugned order to quash the order dt. 6/02/96 (EX-P-1) issued by the 2nd Respondent by declaring that the Writ petitioner is entitled for pay protection as mechanic Grade-I and issuing a Writ of Certiorari.

Counsel for the Petitioner: MR.V.MALLIK

Counsel for the Respondent Nos.1 & 2: MR.R.MANMADHA REDDY (SC FOR APSRTC)

The Court made the following:

Oral Order:

Aggrieved by the office order issued by the 2nd respondent dated 06-02-1996 directing recovery of an amount of Rs. 1,456-10 in fourteen (14) installments from the salary, the writ petition is filed.

The petitioner first entered service as Mechanic Grade-II in the respondent-Corporation with effect from 20-07-1977 at the Regional Workshop, Kadapa. He was promoted as Mechanic Grade-I with effect from 08-01-1979 and his probation was also declared in the said category by proceedings dated 21-07-1980 with effect from 27-09-1979. With effect from 27-09-1979 the petitioner was thus an approved probationer in the category of Mechanic Grade-I.

The petitioner made a representation to the 1st respondent seeking transfer from Kadapa to Nellore. By proceedings dated 16-05-1994 of the 1st respondent, the petitioner was transferred in accordance with his request, from Kadapa to Nellore. In the proceedings, it is ordered that he would be treated as 'junior most' in the Mechanic Grade-I in Nellore and that his seniority will be reckoned from the date he reports to duty at Nellore. However, the proceedings also recorded (apparently erroneously) that the petitioner should give an undertaking to forego seniority in the parent division and become junior most in Nellore in the category of Mechanic Grade-II. Pursuant to the order dated 16-05-1994 the petitioner submitted an undertaking and was posted and joined at Nellore. Thereafter, by the impugned proceedings, recovery of the amount specified therein was ordered from the petitioner's salary styling the amount as 'excess amount paid'. The impugned proceedings also recorded that the petitioner having been transferred from Kadapa to Nellore as Mechanic Grade-II, his pay has been re-fixed and regularized, resulting in the determination of the excess amount paid and therefore, directing its recovery.

The petitioner is not aggrieved by administering the loss of seniority and placing him

as junior most in the category of Mechanic Grade-I on his transfer on request to Nellore from Kadapa. His grievance is directed against the conduct of the respondents in treating him as the junior most in the category of Mechanic Grade-II and directing recovery of salary on that basis as on the date of his transfer to Nellore. In 1979 the petitioner was an approved probationer in the category of Mechanic Grade-I, as already noticed. The proceedings dated 16-05-1994 permitting his transfer from Kadapa to Nellore and issued by the 1st respondent also recorded that the petitioner would be treated as junior most in the category of Mechanic Grade-I and that he has been transferred to Nellore in the category of Mechanic Grade-I. In the circumstances, he could not in law or equity be treated as having been transferred as Mechanic Grade-II or as the junior most candidate at Nellore in the said category. The recovery ordered by the impugned proceedings inasmuch as it is based on the premise that the petitioner was transferred in the category of Mechanic Grade-II to Nellore is, therefore, patently erroneous, misconceived and unsustainable.

It requires to be noted that not only did the respondent-Corporation initially commit the patent error of treating the petitioner as having been transferred as Mechanic Grade-II, but has persisted in projecting the same contention in this court even after the writ petition was filed and all the proceedings, including the proceedings dated 16-05-1994 were brought to the notice of the respondent in the writ petition, by filing a counter affidavit stating that as the petitioner was transferred to Nellore as Mechanic Grade-II, his salary was liable to be re-fixed and recoveries ordered. Such recidivist and persistent projection of a patently unsustainable position, by the respondent corporation is irrational, arbitrary, misconceived and discloses a total non-application of mind.

In the analysis above, the writ petition deserves to be allowed and is accordingly allowed. The impugned order dated 06-02-1996 is quashed. Any amounts recovered pursuant to the order impugned shall be refunded to the petitioner within a period of one week from the date of receipt of a copy of this order. As the respondent has persisted in reiterating the patently unsustainable orders contain in the impugned proceedings, this court considers it appropriate to allow this writ petition with costs quantified at Rs. 500-00 (Rupees five hundred only) payable by the respondents to the petitioner within a period of three weeks from the date of receipt of a copy of this order.

The writ petition is, accordingly, allowed with costs.

GODA RAGHURAM, J

Dt. 19-11-2004

Pvks/*

The Rule nisi has been made absolute, as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Friday the Nineteenth day of November, 2004.

To

1.The Managing Director
APSRTC.,. Musheerabad,
Hyderabad.
2.The Works Manager,
AP.S.R.T.C., Zonal Work Shop.,
Nellore

3.2CD copies

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